



CAN A PUBLIC LIBRARY BOARD LOCATED IN REGIONS 1-5 OR 7, AS DEFINED BY EXECUTIVE ORDER 2020-110, HOLD AN IN PERSON PUBLIC MEETING UNDER EO-2020-110, AND/OR EO 2020-145?

This information sheet is intended as a tool to assist in clarification and decision making for Public Library Directors and Boards. It is not intended as legal advice. Library Boards and Directors should consult with their library attorneys when determining a plan or policy for their libraries.

Additionally, we recommend you review the dates of this information. Executive Orders during the pandemic are issued frequently and rescissions of orders may occur updating information pertinent to your operations.

July 10, 2020

Under the current pandemic and the accompanying declarations of emergency issued by Governor Whitmer (EO 2020-127, June 18, 2020), several Executive Orders (EO) have been issued addressing an array of policies and restrictions necessary to mitigate the spread of Covid-19 within the state.

Many of the executive orders currently in force are ones that have been extended from earlier executive orders. Three of these orders are ones that address the issue of whether public library board meetings may now be held in-person within regions 1-5, and/or 7 (encompassing the lower peninsula other than the top of the mitten):

EO 2020-110 - Temporary restrictions on certain events, gatherings, and businesses - Rescission of Executive Orders 2020-69 and 2020-96 https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-530620--,00.html

EO 2020-145- Safeguards to protect Michigan's workers from COVID-19 - Rescission of Executive Order 2020-114 https://content.govdelivery.com/attachments/MIEOG/2020/07/09/file_attachments/1492329/EO%202020-145%20Emerg%20order%20-%20Workplace%20safeguards%20-%20re-issue.pdf

EO-2020-129 - Temporary authorization of remote participation in public meeting and hearings and temporary relief from monthly meeting requirements for school boards - Rescission of Executive Order 2020-75 https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-532459--,00.html

Michigan's Open Meetings Act (OMA), 1976 PA 267, MCL 15.261 et. seq., <http://legislature.mi.gov/doc.aspx?mcl-Act-267-of-1976> requires that a public body (defined in the act as (among other things): "any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function..."(MCL 15.262(a)) As a governmental entity created and authorized by statute to exercise authority over a public library funded with public funds, a public library board falls under this definition, and

therefore must comply with the requirements of the Open Meetings Act.

Section 3 of the act states: “All meetings of a public body shall be open to the public and shall be held in a place available to the general public. **All persons shall be permitted to attend any meeting** except as otherwise provided in this act.” (MCL 15.263(1)) (emphasis added) (except as otherwise provided refers to sections 7 & 8 of the act which addresses closed sessions).

Section 3 also states “**A person shall not be excluded from a meeting otherwise open to the public** except for a breach of the peace actually committed at the meeting.” (MCL 15.263(6))

While there is some authority that suggests a public body needn’t postpone or interrupt proceedings in order to accommodate an unexpectedly large group of public attendees, a public body does have a duty to choose a venue which could accommodate “members of the public who might reasonably be expected to attend.” (see Mich. Op. Atty Gen. No 5183, 21 (Q.9)) <https://www.ag.state.mi.us/opinion/datafiles/1970s/op05183.htm>

In other words, a public library board is not required to have a meeting venue that would fit their entire municipality, but neither can they choose a venue that would be exceedingly limited, or which would deter members of the public from attending (Mich AG, Open Meetings Handbook, pg. 13-14 https://www.michigan.gov/documents/ag/OMA_handbook_287134_7.pdf).

Currently. Public libraries and their boards in the Governor’s designated regions 1-5, & 7 must abide by the restrictions determined by EO 2020-110 and EO 2020-145 (Regions 6 & 8 are under EO 2020-145 and EO 2020-115). EO 2020-110 section 5 states “Indoor social gatherings and events among persons not part of a single household are permitted, but may not exceed 10 people.” EO 2020-145, section 6(c)(1) (the section listing the workplace requirements libraries are required to adhere to) states: “For stores of less than 50,000 square feet of customer floor space, must limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal...” Section 6(f) adds “Design spaces and store activities in a manner that encourages employees and customers to maintain six feet of distance from one another.”

Between EO 2020-110 and EO 2020-145, it is clear that the intent is to limit the number of people in the library building, and, to enable spaces that permit social distancing of six feet between people.

It is these occupancy limitations caused by the EOs that present the problem with holding a board meeting physically in the library. Because the OMA’s purpose is transparency and public participation in government and public affairs, any limitations on access are a problem. Even if the library typically has very few public participants, the board cannot assume that access can be limited to only those few. The meeting has to be available to any member of the community that might reasonably want to attend.

EO 2020- 129 enables public bodies to hold virtual public meetings until July 30, 2020. This provides an alternative to limited in-person meetings. This not only permits a larger number of potential participants, but also arguably is more open than a physical meeting in that many members of the public who may otherwise wish to participate in a meeting may currently avoid physical meetings because of the fear of infection. A virtual option permits attendance without the fear or uneasiness of physical proximity.

In sum, the OMA mandates an open public meeting available to any member of the public who wishes to attend. An in-person meeting in a facility which is under a mandated occupancy limitation, by definition, cannot accommodate any member of the public who might wish to attend. In addition, insisting on an in-person meeting during a public health emergency further restricts access because many members of the public are currently hesitant to attend public gatherings.

For these reasons, it is currently not advised for a library board located in regions 1-5, and/or 7 to hold in-person board meetings.

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The research and resources above are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.

